

Message Text

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ACTION NEA-10

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R 181235Z MAY 75

FM AMEMBASSY MANAMA BAHRAIN

TO SECSTATE WASHINGTON DC 2116

INFO SECDEF WASHINGTON DC

CNO WASHINGTON DC

CINCUSNAVEUR LONDON UK

COMIDEASTFOR

C O N F I D E N T I A L MANAMA 0571

E.O. 11652: GDS

TAGS : MARR, BA, US

SUBJECT : MIDDLE EAST FORCE: JURISDICTION IN NARCOTICS CASE

1. AS ADDRESSEES AWARE, SINCE REACHING AGREEMENT IN PRINCIPLE WITH GOB ON EXERCISING CRIMINAL JURISDICTION IN CASES INVOLVING MIDDLE EAST FORCE MEMBERS, GOB HAS REQUESTED AND WE HAVE CEDED JURISDICTION IN TWO CASES, ROBERTS CASE (MANAMA 881 AND PREVIOUS) AND HENDERSON/EARLY CASE (MANAMA 229 AND PREVIOUS). IN BOTH CASES, CHARGES AGAINST PERSONNEL CONCERNED COVERED OFFENSES OF THE SORT WHICH, ONCE THE EXCHANGE OF NOTES ON JURISDICTION HAS BEEN FORMALLY EFFECTED, WOULD CLEARLY FALL UNDER BAHRAINI JURISDICTION. IN BOTH CASES USG THEREFORE AGREED TO CEDE JURISDICTION IN ABSENCE FORMAL EXCHANGE OF NOTES, USING A FORMULA FOR REQUESTING AND CEDING JURISDICTION ON A CASE BY CASE BASIS THROUGH EXCHANGE OF DIPLOMATIC NOTES CONTAINING SPECIFIC CONDITIONS AND SAFEGUARDS ENUMERATED STATE 283951.

2. ON MAY 7 BAHRAINI AUTHORITIES SEIZED THREE MIDDLE EAST FORCE PERSONNEL, MESSRS. MACK, VAUGHAN AND HUGHEN FOR USE OF HASHISH. DETAILS BEING REPORTED THROUGH NAVY CHANNELS. AFTER INVESTIGATION GOB AUTHORITIES RELEASED THE THREE TO U.S. NAVY
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CUSTODY.

3. MAY 17 EMBASSY RECEIVED FOREIGN OFFICE NOTE DATED MAY 15 REQUESTING JURISDICTION IN THIS CASE. NOTE FOLLOWS THE AGREED FORMAT ON CONDITIONS AND LEGAL SAFEGUARDS ENUMERATED STATE 283951. CHARGES WHICH GOB WISHES TO PRESS AGAINST ACCUSED ARE "OBTAINING, POSSESSING AND SMOKING HASHISH CONTRARY TO THE PROVISIONS OF ARTICLES 1, 2, 24, AND PARAGRAPH 1 OF ARTICLE 27 OF LAW NO. 4 OF 1973 CONCERNING THE CONTROL OF TRAFFIC IN NARCOTIC DRUGS". GOB IN ITS NOTE REQUESTS JURISDICTION IN THIS CASE.

4. ADDRESSEES WILL NOTE THAT IN PROPOSED PROCEDURAL NOTE ON JURISDICTION, FORMAL EXCHANGE OF WHICH IS STILL PENDING, PARAGRAPH 2A SPECIFIES GOB JURISDICTION OVER CERTAIN "SERIOUS CRIMES" INCLUDING "DRUG TRAFFICKING". WHILE HENDERSON/EARLY CASE INVOLVED DRUG TRAFFICKING CHARGES, IN THIS CASE CHARGES APPEAR LIMITED TO POSSESSION AND USE. AS ADDRESSEES AWARE, PARA 2 CONTAINS GENERAL PROVISION PERMITTING GOB REQUEST FOR JURISDICTION IN "ANY OTHER CASE WHICH THE GOB CONSIDERS TO BE OF PARTICULAR IMPORTANCE" AND IN PARA 2B NOTES USG WILL RETAIN JURISDICTION IN ALL CASES OTHER THAN THOSE SPECIFIED PARA 2A "UNLESS FURTHER DISCUSSIONS BETWEEN THE TWO GOVERNMENTS LEAD TO AN AGREEMENT TO PROCEED DIFFERENTLY".

5. THUS WE HAVE CASE IN WHICH GOB REQUESTING JURISDICTION FOR OFFENSE OF A TYPE WHICH WE HAVE NOT SPECIFICALLY AGREED IN PRINCIPLE IS TO FALL UNDER BAHRAINI JURISDICTION. ON SURFACE, THEREFORE, THERE WOULD APPEAR TO BE SOME JUSTIFICATION FOR NOT CEDING JURISDICTION IN THIS CASE. BEFORE MAKING DETERMINATION, HOWEVER, WE MUST CONSIDER EVIDENT CONFIDENCE ON PART OF GOB THAT WE WILL IN FACT CEDE JURISDICTION. AS ADDRESSEES WILL RECALL, ORIGINAL DRAFT NOTE IN JURISDICTION NEGOTIATIONS WAS PREPARED BY GOB MINISTER OF STARE FOR LEGAL AGGAIRS LAST AUGUST AND,

SOMEWHAT TO MY SURPRISE, SPECIFIED "TRAFFICKING IN DRUGS" WHILE OMITTING POSSESSION AND USE OF NARCOTICS. TO MY RECOLLECTION, AT NO POINT IN LENGTHY JURISDICTION NEGOTIATIONS DID OUR SIDE QUESTION THIS SELF-IMPOSED BAHRAINI LIMITATION ON THE EXTENT ON JURISDICTION SOUGHT IN DRUG CASES SINCE IT CONFIDENTIAL

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OBVIOUSLY SEEMED BEST TO LET SLEEPING DOGS LIE. AS ADDRESSEES WILL ALSO RECALL, THERE WAS TENDENCY THROUGHOUT EARLY STAGES OF NEGOTIATIONS FOR LEGAL MINISTER TO SEEK TO DEFINE GOB'S "POLITICAL OFFENSES" JURISDICTION IN TERMS OF SPECIFIC BAHRAINI LAWS RATHER THAN SPECIFIC TYPES OF OFFENSES. SINCE UNDER BAHRAINI LAW PROVISIONS FOR PUNISHMENT FOR USE AND POSSESSION OF NARCOTICS ARE CONTAINED IN LAW NO. 4 OF 1973 CONCERNING THE CONTROL OF TRAFFIC IN NARCOTIC DRUGS, HISTORY OF NEGOTIATIONS AND PRESENT

CONFIDENT GOB REQUEST SUGGEST DISTURBING POSSIBLITY THAT AT
LEAST SOME GOB OFFICIALS MAY BE OPERATING UNDER IMPRESSION THAT
WE HAVE AGREED IN PRINCIPLE TO CEDE JURISDICTION TO GOB NOT
JUST IN CASES INVOLVING TRAFFICKING IN DRUGS BUT ALSO CASES IN-
VOLVING USE OF DRUGS. IN CONSIDERING RESPONSE TO THIS GOB
REQUEST, WE MUST THUS BE ALERT TO POSSIBILITY THAT OUR REFUSAL
TO CEDE JURISDICTION IN THIS PARTICULAR CASE MIGHT REOPEN
NEGOTIATIONS ON JURISDICTION, PROVIDING NOT JUST PRETEXT BUT
SOLID SUBSTANTIVE REASON FOR GOB TO DELAY FURTHER FORMAL
CONCLUSION OF NEGOTIATIONS.

6. PLEASE ADVISE.
TWINAM

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